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**State of Montana**  
**Office of the Governor**



**Executive Order No. 12-02**

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EXECUTIVE ORDER CERTIFYING TRANSFER OF  
TITLE TO FEDERAL PROPERTY INTERESTS

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WHEREAS, I, JUDY MARTZ, Governor of the State of Montana, pursuant to the authority vested in me as Governor under the Constitution and laws of the State of Montana, do hereby certify that the United States Government has transferred, and the State of Montana has accepted, acting through its State Board of Land Commissioners pursuant to Section 77-1-211(1), MCA, the title to all Federal minerals in the following described lands as part of the Crown Butte land exchange. Section 503(a) of the 1998 Interior Appropriations Act (Public Law No. 105-83) provided for conveyance of "all Federal mineral rights" in Otter Creek Tracts 1, 2 and 3 described below and no express restrictions have been placed on the following described mineral property interests which would conflict with the terms of potential use described in Section 2, Ch. 485, Laws of 2001:

**OTTER CREEK TRACT #1**

Township 3 South, Range 45 East, MPM

Section 26: All

Section 34: All

Township 4 South, Range 45 East, MPM

Section 2: Lots 1, 2, 3, 4, S1/2N1/2, S1/2

1 OTTER CREEK TRACT #2

2 Township 4 South, Range 45 East, MPM

3 Section 10: E1/2, E1/2W1/2

4 Section 12: All

5 Section 14: Lots 1, 2, 3, 4, 5, 6, 7, 8, W1/2

6 Section 22: N1/2NE1/4, SE1/4NE1/4, E1/2SW1/4

7 Section 24: Lots 1, 2, 3, 4, 5, 6, 7, 8, W1/2E1/2,  
8 E1/2W1/2

9 Section 26: All

10 OTTER CREEK TRACT #3

11 Township 4 South, Range 45 East, MPM

12 Section 6: Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,  
13 16, 17, SE1/4

14 Section 8: Lots 1, 2, 3, 4, 5, 6, 7, 8, E1/2

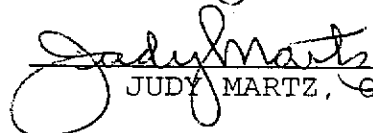
15 Section 18: All

16 Section 20: Lots 1, 2, 3, 4, E1/2, E1/2W1/2

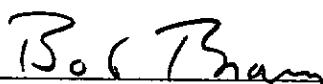
17 Section 22: W1/2W1/2

18 A copy of the final Order shall be delivered to the Code  
19 Commissioner. This Order is effective immediately.

20 GIVEN under my hand and the  
21 GREAT SEAL of the State of  
22 Montana, this 28th day  
23 of May 2002.

24   
25 JUDY MARTZ, Governor

26 ATTEST:

27   
28 BOB BROWN, Secretary of State

MINUTES  
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS  
May 20, 2002, at 9:00 a.m.  
Room 303 State Capitol Building

PRESENT: Governor Judy Martz, Secretary of State Bob Brown, Attorney General Mike McGrath, Auditor John Morrison, and Superintendent McCulloch.

Mr. Morrison moved for approval of the minutes from the April 15, 2002, meeting of the Board of Land Commissioners. Seconded by Mr. McGrath. Motion carried unanimously.

**BUSINESS CONSIDERED:**

502-1      DFWP: BICE/HIRSCH CONSERVATION EASEMENT

Paul Sihler, DFWP, requested final approval of the Bice/Hirsch Conservation Easement located along the Tongue River in Custer County, 30 miles south of Miles City. The DFWP proposes to accept 2,668 acres from Les and Donna Hirsch, and 12,694 acres from the Bice Ranch in the form of a Conservation Easement to be funded by the Habitat Montana Program. The amount of the Hirsch easement is \$134,172, the Bice easement is \$1,217,842. Part of the Hirsch Ranch is currently in a Conservation Easement and has been since 1987. The acreage is 14 miles of river front and has important riparian areas and sagebrush grassland habitat and wildlife values. These two ranches have the two highest rated statewide habitat types defined in the DFWP's habitat plan and in addition, provide year round habitat for mule deer, white tailed deer, antelope, sage grouse, sharp tailed grouse, pheasants, prairie dogs, and seasonal habitat for a wide array of species including raptors, small mammals, water fowl, and a variety of neo-tropical migrant birds. Those are the values the DFWP is seeking to maintain with this easement. As with all of the DFWP's easements, one of the goals is to maintain this in agricultural production. The DFWP believes that agricultural production and the wildlife habitat values are consistent. The process included distribution of an EA Management Plan and Socio-economic report, there was a 30-day public comment period. Four people were in favor, and nine were opposed. The Custer County Commission signed off on the easement. A revised EA was distributed for another 30-day comment period and solicitation received ten comments, six in favor, two opposed, and a couple of questions which were responded to. Mr. Sihler emphasized that there were no new comments. One concern was about the value of the adjacent lands. Mr. Sihler said he doesn't know of any CE's having a negative effect on adjacent lands. National research indicates that property values increase due to the open space value. While the department prefers not to have a right-of-way over the easement for the Tongue River Railroad, the railroad has the power of eminent domain, and if it does go through FWP will be compensated as a partial surface owner. The location of the right-of-way is on the edge of the easement, not in the riparian area where the wildlife values are, and the integrity and value of the easement is still there. Mr. Day from Tongue River Railroad requested that the Bice/Hirsch CE contain language related to the TRR having an alignment along the property and expressed satisfaction in the language that was in the 1997 easement. The same language is in these easements before the Board today.

An issue raised dealt with coal bed methane development and the assertion of their outstanding mineral rights under this CE, and that coal bed methane development is imminent and will impact the easement. The Montana Bureau of Mines and Geology supplied a mineral opinion which concludes that the coal deposits are uneconomical for commercial development. While there may be some potential for coal bed methane, the prime methane beds are in the Otter Creek tract further south. From the department's perspective the greater threat from coal bed methane development is the water quality in the Tongue River, rather than something happening on the site of the easements. The permitting process for coal bed methane will address those issues.

Ms. Morrison asked that the Synness lease designated as Sub-A be broken out and he be allowed to recuse himself on that because the party is represented by his former law partner.

Governor Martz asked if anyone on the Land Board had a problem with that? Seeing none, she asked that a motion be made reflecting Mr. Morrison's suggestion.

Ms. McCulloch moved for approval exempting Auditor Morrison from the Synness lease.

Mr. McGrath made a substitute motion to approve 502-11 Sub-A, the Synness lease, first. Seconded by Mr. Brown. Motion carried 4-0, with Mr. Morrison abstaining.

Mr. McGrath next moved that the remaining leases in 502-11 Sub-B through R be approved. Seconded by Mr. Brown. Motion carried unanimously.

502-12      M&M CONTRACTING, INC. SETTLEMENT AGREEMENT

This is a request for approval to refund money to M&M Contracting who was the purchaser of Lot 1, Block 8, of the Continental Divide Subdivision at a public auction held September 2001. Subsequent to that sale, M&M Contracting alleged the realty agent that handled these sales for the department made specific recommendations to them relative to the location of several easements that existed on the property and purportedly has created a decrease in the value and the ability for M&M Contracting to fulfill the anticipated actions it had planned for that property. Although the department doesn't believe misrepresentations were made, it does believe it is appropriate to enter into the settlement agreement and return the sale price to M&M and have the unencumbered property title will be returned to the state.

Mr. McGrath asked if this was the final settlement that will preclude litigation? The state is just giving the money back for exchange of the property?

Mr. Clinch replied yes to all questions.

Motion was made by Mr. McGrath to approve the settlement agreement. Seconded by Mr. Brown. Motion carried unanimously.

502-13      ACCEPTANCE OF OTTER CREEK MINERAL TRACTS

On April 10, 2002, the United States Bureau of Land Management executed Patent No. 25-2002-0038 in conveying the Otter Creek mineral rights from federal to state ownership. Pursuant to §77-1-211 and 212, MCA, the Land Board is authorized to accept on behalf of the State of Montana, any grants of land from the federal government. This agenda item recommends a motion be made accepting the Otter Creek tracts by this Land Board on behalf of the State of Montana.

Motion was made by Mr. Brown to approve the acceptance of the Otter Creek mineral tracts from the federal government to the State of Montana. Seconded by Mr. McGrath. Motion carried unanimously.

## ACCEPTANCE OF OTTER CREEK MINERAL TRACTS

On April 10, 2002, the United States Bureau of Land Management executed Patent Number 25-2002-0038 to convey the Otter Creek mineral rights from federal to state ownership. A copy is attached for your reference. Pursuant to 77-1-211 and -212, MCA, the Land Board is authorized to accept, on behalf of the State of Montana, grants of land from the federal government.

The Director recommends acceptance by the Land Board of the Otter Creek mineral rights detailed on Patent Number 25-2002-0038.

# The United States of America

To all to whom these presents shall come, Greeting:

MTM 88970

WHEREAS,

State of Montana

is entitled to a patent pursuant to Section 503 of Public Law 105-83 of November 14, 1997, for all federal mineral rights designated and described as:

Otter Creek Tract No. 1:

Coal Only (640.00 acres) -

Principal Meridian, Montana

T. 3 S., R. 45 E.,  
sec. 26, NW.

T. 4 S., R. 45 E.,  
sec. 2, SW.

All Minerals (1,277.48 acres) -

Principal Meridian, Montana

T. 3 S., R. 45 E.,  
sec. 26, SW;  
sec. 34, all.

T. 4 S., R. 45 E.,  
sec. 2, lots 1 through 4, inclusive, SWNW.

Otter Creek Tract No. 2:

Coal Only (1,160.00 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,  
sec. 10, NE $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
sec. 12, NW;  
sec. 22, E $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
sec. 26, NW.

Coal and Oil & Gas Only (40.00 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,  
sec. 10, NE $\frac{1}{4}$ SE $\frac{1}{4}$ .

All Minerals (1,903.73 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,  
sec. 12, SW;  
sec. 14, lots 1 through 8, inclusive, and W $\frac{1}{2}$ ;  
sec. 22, NW $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
sec. 24, lots 1 through 8, inclusive, W $\frac{1}{2}$ E $\frac{1}{2}$ , and E $\frac{1}{2}$ W $\frac{1}{2}$ ;  
sec. 26, SW.

25-2002-0038

MTM 88970  
Page 2

Otter Creek Tract No. 3:

Coal Only (310.04 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,  
sec. 8, lots 1 through 4, inclusive, lots 6 and 7,  
N $\frac{1}{4}$ NE $\frac{1}{4}$ , and SW $\frac{1}{4}$ NE $\frac{1}{4}$ .

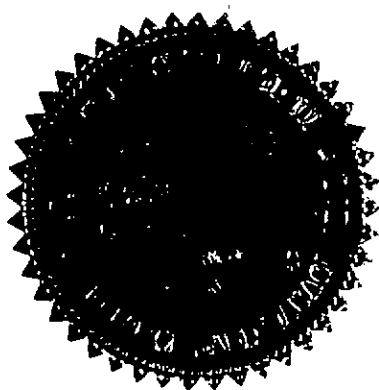
All Minerals (2,292.37 acres) -

Principal Meridian, Montana

T. 4 S., R. 45 E.,  
sec. 6, lots 6 through 17, inclusive, and SE $\frac{1}{4}$ ;  
sec. 8, lots 5 and 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;  
sec. 18, all;  
sec. 20, lots 1 through 4, inclusive, E $\frac{1}{4}$ , and E $\frac{1}{4}$ W $\frac{1}{4}$ ;  
sec. 22, W $\frac{1}{4}$ W $\frac{1}{4}$ .

Aggregating 2,110.04 coal only acres; 40.00 coal and oil & gas only acres; and  
5,473.58 all minerals acres.


NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the  
State of Montana, the mineral rights owned by the United States in the land above-  
described; TO HAVE AND TO HOLD the same, with all the rights, privileges,  
immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the  
said State of Montana, its successors and assigns, forever.



IN TESTIMONY WHEREOF, the undersigned authorized officer of the  
Bureau of Land Management, in accordance with the provisions of the  
Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States,  
caused these letters to be made Patent, and the Seal of the Bureau to be  
hereunto affixed.

GIVEN under my hand, in Billings, Montana  
the TENTH day of APRIL  
in the year of our Lord two thousand and two  
and of the Independence of the  
United States the two hundred and twenty-sixth.

By

  
Mat Millenbach  
State Director  
Montana State Office

Patent Number

**25-2002-0038**